

Kenya Tax Amnesty



GUIDELINE

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Tax Amnesty

KENYA

An Opportunity for Taxpayers to Clean Up Their Tax Obligations

"The best things in life are free, but sooner or later the government will find a way to tax them."

Recent Development

The Finance Act 2016 introduced Section 37B in Tax Procedure Act and granted tax amnesty to Kenyan resident persons. This amnesty came in to effect from 1 January 2017. Finance Act 2017 brought in certain changes to the original Amnesty and after long debate KRA published guideline dated 10 July 2017 on the eligibility and application process.

It is our understanding that potentially the Government will obtain short term and long term benefits from this Amnesty. In the short term, the Government will receive immediate foreign exchange remittances from the taxpayers that participate in the tax amnesty program. In the long term, the Government will receive tax revenue from the additional economic activities related to the repatriated offshore funds.

We have been monitoring the discussion on the proposed tax amnesty law since last year. During that time, changes from one draft to another were quite significant. We note that at least two versions of the guideline have been circulated to the public. Therefore, to ascertain that taxpayers are referring to the correct text of the law, they should follow the Finance Act 2017 together with KRA guideline dated 10 July 2017.

Notwithstanding the above, we set out below our views of the law based on the latest guideline issued by Kenya Revenue Authority.



Our views

KENYA TAX AMNESTY

Scope

Income earned outside Kenya which would have been taxable in Kenya under Kenyan tax laws if it had been accrued or derived in Kenya or derived from Kenya or deemed to have been accrued in or derived in Kenya. (All worldly income of a person that, if earned in Kenya, would have been taxable on him.)

Who is entitled?

Kenyan resident persons with taxable income earned outside of Kenya relating to all years of income up to 31 December 2016.

Person includes individual, company, partnership, limited liability partnership, societies, association of persons, trusts, National Government or foreign government, an international organization, if they were a resident of Kenya for tax purposes when generating the income.

Who is not entitled?

The amnesty shall not apply to:

- Income (declared or undeclared) earned in Kenya
- Income earned outside Kenya but already declared and taxed in Kenya
- A person who has been assessed or is under a tax audit or investigation by the Commissioner with respect to assets, liabilities and income that would have qualified for the amnesty on the date the Finance Act 2016 was assented to (13 September 2016)

When to participate?

The deadline of the tax amnesty program is 30 June 2018.

Participant shall complete and make full disclosure by filing return on iTax platform in the prescribed format using Form A/37B. The form is not available on the KRA platform currently as the iTax system is being upgraded in order to accommodate the return.

Repatriation

Funds voluntarily declared under the amnesty shall be repatriated on or before 30 June 2018. The funds which are defined to include 'cash declared in the return and accounts for the purpose of transfer back in to the country'. Our understanding of this is that it comprises of cash and bank balances.

Consequently, one is only required to repatriate cash assets meaning that if a person has invested any of their income in foreign non-cash assets, they would not be required to liquidate that and repatriate those funds/cash into Kenya.

Where the funds have not been transferred to Kenya by 30 June 2018, a five-year extension period is granted up until 30 June 2023 and will be subject to 10% penalty on the remittances.

Participants

The declaration is to be made by the taxpayer. Clarification of certain categories are provided:

- Married couples, filing joint or separate returns, may file a joint declaration.
- In case of minors, declaration can be made by parent or legal guardian.
- For assets held in a trust, the application can be made by the trustee or the settlor or the beneficiaries of the Trust.

Forfeiture of any rights?

The Kenyan Amnesty is very generous. The Commissioner shall refrain from assessing or recovering taxes, penalties or interest in respect of any income declared under the programme.

Taxpayers who participate in the tax amnesty program would NOT forfeit any of their taxation rights including the right to use remaining tax losses, carry forward of losses, and to ask for a refund of overpaid taxes for prior years.

Supporting documents

A person who provides information as required in the Form A/37B, is not required to provide any further details or supporting documentation and the Commissioner is refrained from following up on the source of income.

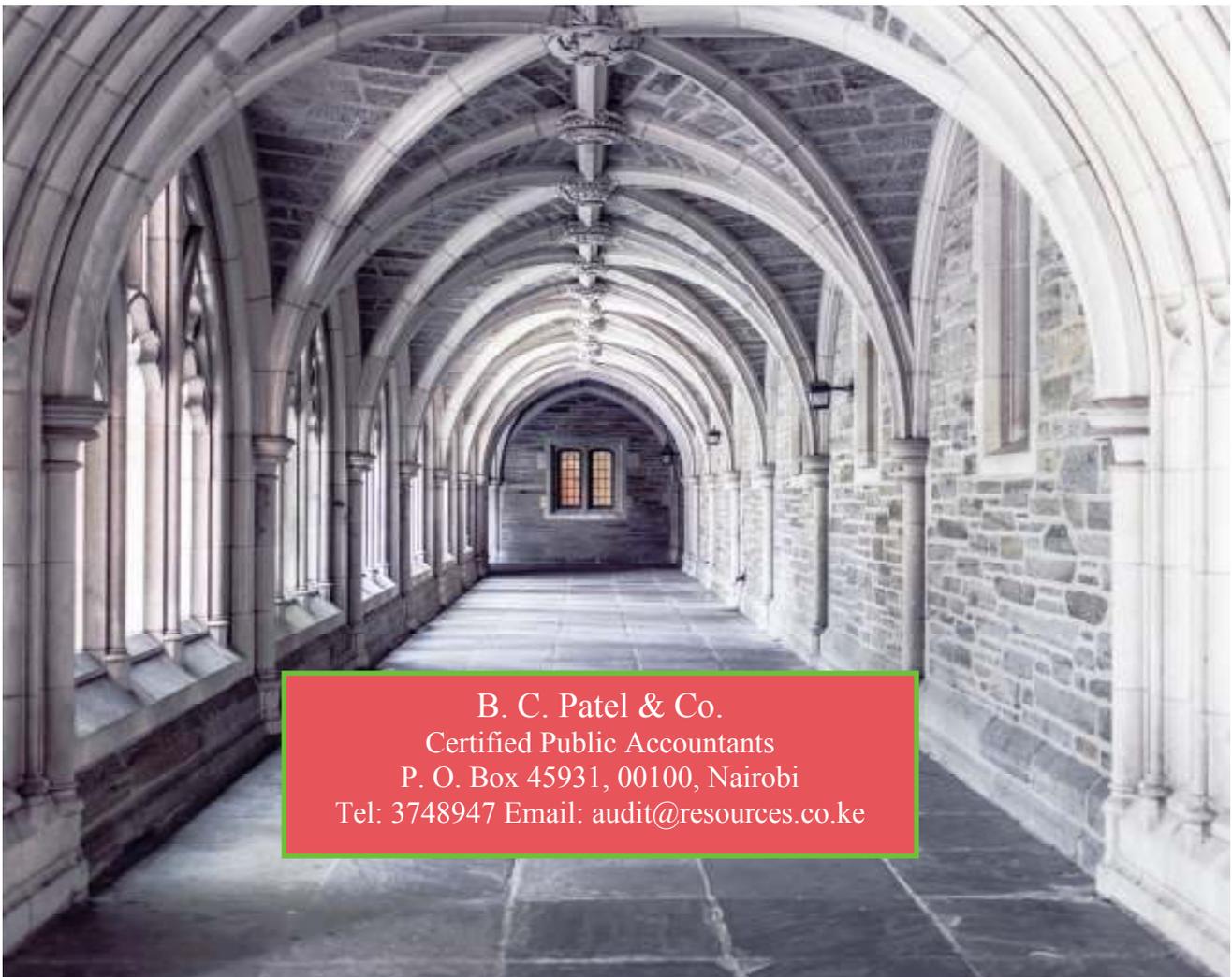
Acknowledgement

Upon completing the online application, a person will be issued with an acknowledgement copy. A system generated certificate will be issued to the applicant once the amnesty requirements are met. From the guideline it is not clear how long the Commissioner will take to respond to an application for amnesty.

Conclusion:

In general, we believe this tax amnesty program is a good opportunity for some taxpayers to regularize their tax affairs, and have a fresh start where they can be compliant with their tax obligations. However, this cannot be generalized bearing in mind that every taxpayer's affairs may be unique to their own circumstances. Therefore, appropriate consultation is necessary when considering participating in this program.

Please contact Mr. Mihir Chalishazar, Mrs. Ameer Chalishazar or Mr. Amar Dodhia should you have any further queries on this.



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